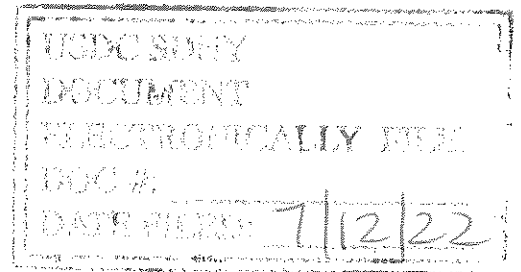


Copies mailed 7/12/22
Clerks of Judge Davison
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



Eryc Hairston,

Petitioner,

- against -

Earl Bell, *Superintendent of Clinton
Correctional Facility*

Respondent.

21 Civ. 6503 (NSR)(PED)

ORDER DENYING STAY

PAUL E. DAVISON, U.S.M.J.:

By motion dated October 22, 2021, Petitioner seeks a stay of this *habeas corpus* action so that he can pursue and exhaust C.P.L. § 440.10 remedies in state court. [Dkts. 11-12.] Petitioner seeks to bring claims pursuant to C.P.L. § 440.10 (1)(g) on the basis of purported newly discovered evidence in the form of an affidavit from Shaquan Tucker, recanting his trial testimony. Respondent filed an affidavit in opposition on March 21, 2022. [Dkt. 19.]

This Court today issues a Report and Recommendation which concludes that this action must be dismissed as time-barred. In the event that Judge Román adopts this Court's recommendation, Petitioner's motion for a stay is moot. Petitioner may renew the motion in the event that the recommendation is **not** adopted.

Accordingly, Petitioner motion is **DENIED WITHOUT PREJUDICE**. The Clerk shall close Dkt. 11.

Dated: July 12, 2022
White Plains, New York


PAUL E. DAVISON, U.S.M.J.

A copy of this Order has been mailed to:

Eryc Hairston
DIN# 16A3636
Clinton Correctional Facility
P.O. Box 2001
Dannemora, New York 12929